

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JOHN RICE, §
Plaintiff, §
§
v. § No. 3:05-CV-0904-P
§
COCA-COLA, §
Defendant. §

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b), and an order of the District Court in implementation thereof, this case has been referred to the United States Magistrate Judge. The findings, conclusions and recommendation of the Magistrate Judge, as evidenced by his signature thereto, are as follows:

FINDINGS AND CONCLUSIONS:

Statement of Case: Plaintiff brings this case alleging copyright infringement by Defendant. Process has not been issued in this case. However, on May 16, 2004, this court issued an order requiring Plaintiff to submit an amended complaint in compliance with Fed. R. Civ. P. 8(a) within thirty days. The order notified Plaintiff that failure to comply would result in a recommendation that the suit be dismissed for failure to prosecute. As of the date of this recommendation, Plaintiff has not responded to this order.

Findings and Conclusions:

Fed. R. Civ. P. 41(b) allows a court to dismiss an action *sua sponte* for failure to prosecute or for failure to comply with the federal rules or any court order. *E.g.*, *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998). “This authority [under Rule 41(b)] flows from the court’s inherent power to control its docket and prevent undue delays in

the disposition of pending cases.” *Boudwin v. Graystone Ins. Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985), citing *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962). Because Plaintiff has been given ample opportunity to submit an amended complaint that complies with Rule 8(a), but has failed or refused to do so, this action should be dismissed for want of prosecution.

RECOMMENDATION:

For the foregoing reasons, it is recommended that this case be dismissed without prejudice for want of prosecution pursuant to Fed. R. Civ. P. 41(b).

A copy of this recommendation shall be mailed to Petitioner.

Signed this 11th day of July, 2005.



WM. F. SANDERSON, JR.
UNITED STATES MAGISTRATE JUDGE

NOTICE

In the event that you wish to object to this recommendation, you are hereby notified that you must file your written objections within ten days after being served with a copy of this recommendation. Pursuant to *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996)(*en banc*), a party's failure to file written objections to these proposed findings of fact and conclusions of law within such ten-day period may bar a *de novo* determination by the district judge of any finding of fact or conclusion of law and shall bar such party, except upon grounds of plain error, from attacking on appeal the unobjected to proposed findings of fact and conclusions of law accepted by the district court.